

## **Assembly Bill No. 1684**

### **CHAPTER 40**

An act to add and repeal Section 20677.5 of the Government Code, and to amend Sections 201, 202, and 219 of the Labor Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor May 15, 2002. Filed with  
Secretary of State May 16, 2002.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 1684, Committee on Public Employees, Retirement and Social Security. State employees: memorandum of understanding.

(1) Existing law provides that if any provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees requires the expenditure of funds, those provisions of the memorandum of understanding shall not become effective unless approved by the Legislature in the annual Budget Act.

This bill would approve provisions that require the expenditure of funds of a memorandum of understanding entered into between the state employer and State Bargaining Unit 2, the Association of California State Attorneys and Administrative Law Judges, and would provide that the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

This bill would provide that provisions of the memorandum of understanding approved by this bill that require the expenditure of funds shall not take effect unless funds for these provisions are specifically appropriated by the Legislature, and would provide that if funds for these provisions are not specifically appropriated by the Legislature, the state employer, and the affected employee organization shall meet and confer to renegotiate the affected provisions.

(2) Existing law prescribes contribution rates for state employees who are state miscellaneous, state industrial, or state safety members of the Public Employees' Retirement System.

This bill would reduce the contribution rates by 2½% during the period from January 1, 2002, to June 30, 2002, inclusive, and by an additional 2½% during the period from July 1, 2002, to June 30, 2003,

inclusive, for state miscellaneous and state industrial members of the Public Employees' Retirement System in State Bargaining Unit 2.

(3) Existing law provides generally that wages earned and unpaid at the time an employee is discharged or an employee without a written contract quits are due and payable not later than 72 hours thereafter.

This bill would expressly permit a state employer to contribute unpaid vacation and other leave on a pretax basis, to the discharged or quitting employee's state-sponsored supplemental retirement account if the employee has submitted a written election authorizing the contribution, as specified.

(4) Existing law prohibits the contravention or setting aside by a private agreement of certain laws prescribing the frequency of wage payments.

This bill would provide that a state employer does not violate that prohibition by authorizing employees who quit or are discharged to take payment for unused or accumulated vacation or other leave.

(5) The annual Budget Act appropriates specified amounts from the General Fund, unallocated special funds, and unallocated nongovernmental cost funds, for state employee compensation.

This bill would appropriate \$875,000 from those funds for state employee compensation, in augmentation of the Budget Act of 2001.

(6) The bill would also declare that it is to take effect immediately as an urgency statute.

Appropriation: yes.

*The people of the State of California do enact as follows:*

SECTION 1. The Legislature finds and declares that the purpose of this act is to approve an agreement pursuant to Section 3517 of the Government Code entered into by the state employer and a recognized employee organization.

SEC. 2. The provisions of the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code and entered into by the state employer and State Bargaining Unit 2, the Association of California State Attorneys and Administrative Law Judges, and that require the expenditure of funds, are hereby approved for the purposes of Section 3517.6 of the Government Code.

SEC. 3. The provisions of the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2001, and that require the expenditure of funds, shall not take effect unless funds for these provisions are specifically appropriated by the Legislature. In the event that funds for these provisions are not specifically appropriated by the Legislature, the state employer and the



affected employee organization shall meet and confer to renegotiate the affected provisions.

SEC. 4. Notwithstanding Section 3517.6 of the Government Code, the provisions of any memorandum of understanding that require the expenditure of funds shall become effective even if the provisions of the memorandum of understanding are approved by the Legislature in legislation other than the annual Budget Act.

SEC. 5. Section 20677.5 is added to the Government Code, to read:

20677.5. (a) Notwithstanding any provisions of this part to the contrary, the normal rate of contribution for state miscellaneous and state industrial members in State Bargaining Unit 2 shall be the following:

(1) From January 1, 2002, to June 30, 2002, inclusive, the normal rate of contribution for a member whose service is not included in the federal system shall be 3.5 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(2) From July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member whose service is not included in the federal system shall be 1 percent of the compensation in excess of three hundred seventeen dollars (\$317) per month paid that member for service rendered.

(3) From January 1, 2002, to June 30, 2002, inclusive, the normal rate of contribution for a member whose service is included in the federal system shall be 2.5 percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(4) From July 1, 2002, to June 30, 2003, inclusive, the normal rate of contribution for a member whose service is included in the federal system, shall be zero percent of the compensation in excess of five hundred thirteen dollars (\$513) per month paid that member for service rendered.

(b) Notwithstanding any provisions of Section 21073.7 to the contrary, a member who elects to become subject to the benefits prescribed in Section 21354.1 and who is subject to this section shall be subject to the normal rate of contribution set forth in this section.

(c) This section does not apply to state miscellaneous or state industrial members who are subject to Section 21076.

(d) If the provisions of this section are in conflict with the provisions of a memorandum of understanding reached pursuant to Section 3517.5 of the Government Code, the memorandum of understanding shall be controlling without further legislative action, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions may not become effective unless approved by the Legislature in the annual Budget Act.



(e) This section shall become inoperative on July 1, 2003, and, as of January 1, 2004, is repealed, unless a later enacted statute that becomes operative on or before January 1, 2004, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 201 of the Labor Code is amended to read:

201. (a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. An employer who lays off a group of employees by reason of the termination of seasonal employment in the curing, canning, or drying of any variety of perishable fruit, fish or vegetables, shall be deemed to have made immediate payment when the wages of said employees are paid within a reasonable time as necessary for computation and payment thereof; provided, however, that the reasonable time shall not exceed 72 hours, and further provided that payment shall be made by mail to any employee who so requests and designates a mailing address therefor.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided, at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's discharge from employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when the state employer discharges an employee, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay



period for state employees shall be deferred into the next calendar year. An employee electing to defer payment into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

SEC. 7. Section 202 of the Labor Code is amended to read:

202. (a) If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

(b) Notwithstanding any other provision of law, the state employer shall be deemed to have made an immediate payment of wages under this section for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, provided at least five workdays prior to his or her final day of employment, the employee submits a written election to his or her appointing power authorizing the state employer to tender payment for any or all leave to be contributed on a pretax basis to the employee's account in a state-sponsored supplemental retirement plan as described under Sections 401(k), 403(b), or 457 of the Internal Revenue Code provided the plan allows those contributions. The contribution shall be tendered for payment to the employee's 401(k), 403(b), or 457 plan account no later than 45 days after the employee's last day of employment. Nothing in this section is intended to authorize



contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

(c) Notwithstanding any other provision of law, when a state employee quits, retires, or disability retires from his or her employment with the state, the employee may, at least five workdays prior to his or her final day of employment, submit a written election to his or her appointing power authorizing the state employer to defer into the next calendar year payment of any or all of the employee's unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability, retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power. To qualify for the deferral of payment under this section, only that portion of leave that extends past the November pay period for state employees shall be deferred into the next calendar year under this section may do any of the following:

(1) Contribute the entire payment to his or her 401(k), 403(b), or 457 plan account.

(2) Contribute any portion of the deferred payment to his or her 401(k), 403(b), or 457 plan account and receive cash payment for the remaining noncontributed unused leave.

(3) Receive a lump-sum payment for all of the deferred unused leave as described above.

Payments shall be tendered under this section no later than February 1 in the year following the employee's last day of employment. Nothing in this section is intended to authorize contributions in excess of the annual deferral limits imposed under federal and state law or the provisions of the supplemental retirement plan itself.

SEC. 8. Section 219 of the Labor Code is amended to read:

219. (a) Nothing in this article shall in any way limit or prohibit the payment of wages at more frequent intervals, or in greater amounts, or in full when or before due, but no provision of this article can in any way be contravened or set aside by a private agreement, whether written, oral, or implied.

(b) The state employer does not violate this section by authorizing employees who quit, or are discharged from, their employment with the state to take payment for any unused or accumulated vacation, annual leave, holiday leave, sick leave to which the employee is otherwise entitled due to a disability retirement, or time off to which the employee is entitled by reason of previous overtime work where compensating time off was given by the appointing power, as provided in Section 201 or 202.



SEC. 9. The sum of eight hundred seventy-five thousand dollars (\$875,000) is hereby appropriated for expenditure in the 2001–02 fiscal year in augmentation of, and for the purpose of state employee compensations as provided in, Items 9800-001-0001, 9800-001-0494, and 9800-001-0988 of Section 2.00 of the Budget Act of 2001 (Chapter 106, Statutes of 2001) in accordance with the following schedule:

(a) Three hundred ninety-two thousand dollars (\$392,000) from the General Fund in augmentation of Item 9800-001-0001.

(b) Three hundred nine thousand dollars (\$309,000) from unallocated special funds in augmentation of Item 9800-001-0494.

(c) One hundred seventy-four thousand dollars (\$174,000) from other unallocated nongovernmental cost funds in augmentation of Item 9800-001-0988.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2001–02 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

